

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF OREGON
3 UNITED STATES OF AMERICA,)
4 Plaintiff,) No. 09-CR-60163-1-AA
5 v.) December 1, 2009
6 RANDALL BLAIR JOHNSON,) Eugene, Oregon
7 Defendant.)

8
9 TRANSCRIPT OF ARRAIGNMENT

10 BEFORE THE HONORABLE THOMAS M. COFFIN

11 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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14 APPEARANCES OF COUNSEL

15 FOR THE PLAINTIFF: WILLIAM E. FITZGERALD
16 SCOTT E. BRADFORD
17 United States Attorney's Office
18 405 E. 8th Avenue
Suite 2400
Eugene, OR 97401
(541) 465-6771

19 FOR THE DEFENDANT: MARK WEINTRAUB
20 Federal Public Defender's Office
151 W. 7th
21 Suite 510
Eugene, OR 97401
(541) 465-6937

22
23 COURT REPORTER: Deborah Wilhelm, CSR, RPR
P.O. Box 1504
24 Eugene, OR 97440
(541) 431-4113

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1 (Tuesday, December 1, 2009; 1:35 p.m.)

P R O C E E D I N G S

3 THE CLERK: Now is the time set for Case Number
4 09-60163, *United States of America versus Randall Blair*
5 *Johnson*, arraignment.

6 THE COURT: Mr. Johnson, you've been charged in
7 an indictment. Count 1 of the indictment that's been
8 returned by the United States grand jury for the
9 District of Oregon charges you with evasion of income
10 tax. And this will be for the calendar year 2003?

11 MR. FITZGERALD: Correct, Your Honor.

12 THE COURT: Count 2 charges you with evasion of
13 income tax for the calendar year 2004. Count 3 charges
14 you with evasion of income tax for the year 2005.
15 Count 4 charges you with willful failure to file income
16 tax returns in '03. Count 5, failure to file income tax
17 returns in '04. Count 6 charges you with failure to
18 file income tax returns in '05.

19 What's the maximum penalty on each count if
20 there is a conviction?

21 MR. FITZGERALD: Thank you, Your Honor. As to
22 counts 1 through 3, the evasion counts, the maximum
23 punishment is five years, \$250,000 fine, and supervised
24 release.

As to counts 4 through 6, willful failure to

1 file income tax returns, the maximum punishment is one
2 year imprisonment, and a fine of \$100,000.

3 THE COURT: Do you understand what you are
4 charged with? Mr. Johnson, do you understand what you
5 are charged with?

6 THE DEFENDANT: I don't.

7 THE COURT: All right. You are charged with
8 evading taxes and failing to file tax returns. Do you
9 understand that?

10 THE DEFENDANT: I'm here under duress.

11 MR. WEINTRAUB: Judge, if --

12 THE COURT: Pardon?

13 THE DEFENDANT: I'm here under duress. I don't
14 consent to this.

15 THE COURT: Well, normally --

16 THE DEFENDANT: And I don't understand. Excuse
17 me, I'm sorry, I'll let you speak. You asked me -- I
18 was going to say that I don't understand these charges
19 against me.

20 THE COURT: Okay. Here is the thing,
21 Mr. Johnson, I would like to interact with you and
22 fashion reasonable conditions of release. But in order
23 to do that, we're going to have to be able to
24 communicate. And you are going to have to be able to
25 communicate with Pretrial Services and cooperate in

1 their investigation into what conditions of release they
2 might be able to fashion for you.

3 THE DEFENDANT: Thank you.

4 THE COURT: And as part of that process, we're
5 all going to have to be satisfied that you will abide by
6 the conditions of release as we impose them.

7 THE DEFENDANT: I'm very interested in that.

8 THE COURT: And if your attitude is you have no
9 jurisdiction over me, I don't have any reason to abide
10 by the conditions of release, I'm not going to, fine.
11 You won't be released.

12 THE DEFENDANT: Well, I --

13 THE COURT: And that's the way we would deal
14 with that situation. So I'm going to ask you again: Do
15 you understand what you are charged with? You are
16 charged with tax violations, failing to file tax returns
17 and evading taxes. Do you understand that concept? I'm
18 not asking you if you're guilty. I'm asking you if you
19 understand what you are charged with.

20 THE DEFENDANT: In all honesty, sir, I don't
21 understand that at all. And I've tried to understand.
22 And it's my understanding that I'm here because the
23 Department of Justice got a file from IRS. I've asked
24 the IRS many times many questions. They've never been
25 answered. And the first thing I get is a call from the

1 U.S. Marshal that I've been indicted. So this is not
2 something I understand.

3 THE COURT: Okay. Let me see if I can explain
4 it to you. It is the government's position that
5 everyone who earns income has an obligation to pay taxes
6 on the income that they earn. That's the general
7 concept. And that people who earn income have an
8 obligation to file a tax return disclosing to the
9 Internal Revenue Service the amount of income they've
10 earned during a calendar year. And this indictment
11 charges you with failing to do that.

12 The indictment alleges you were required to
13 file tax returns for three years and that you didn't do
14 it. It further alleges that during those three years,
15 you owed income taxes to the government, and that you
16 failed to pay those taxes that you owe. That's what the
17 indictment alleges. Do you understand those concepts?

18 THE DEFENDANT: Well, except -- I don't. And
19 here's why: Because it was my understanding that that
20 reference you made to filing taxes, those who are
21 liable, and I don't find anywhere in there that points
22 to me as being liable. So, no, I don't understand that.

23 THE COURT: Well, again, I'm not asking you if
24 you feel that you are guilty of the charges or not
25 guilty, for that matter. I'm just asking you if you

1 understand what you are charged with. You are free to
2 disagree with them. I just want to know that you
3 understand them, what you are charged with.

4 THE DEFENDANT: Your Honor, I don't.

5 THE COURT: Okay. Next question: Can you
6 afford to hire an attorney to represent you?

7 THE DEFENDANT: I can afford one, yes.

8 THE COURT: Are you going to hire an attorney
9 to represent you?

10 THE DEFENDANT: I would search for competent
11 counsel.

12 THE COURT: Do you have an attorney in mind
13 that you want to represent you?

14 THE DEFENDANT: I have not searched. So I
15 don't have an attorney in mind.

16 THE COURT: All right. And you have the
17 financial ability to hire your own attorney, is that
18 what you are telling me?

19 THE DEFENDANT: Well, I -- sir, I am sorry,
20 I've never shopped them. I believe that I do, but I
21 really am pretty ignorant with respect to the price of
22 attorneys.

23 MR. FITZGERALD: Your Honor, I have some
24 figures for the court.

25 THE COURT: Okay.

1 MR. FITZGERALD: The government -- according to
2 the government's computations, Mr. Johnson had gross
3 income in 2003 of \$274,000; 2004, 462,000; and 2005,
4 401,000. So for that three-year period, \$1.1 million in
5 gross income.

6 The tax due on those three years total
7 \$218,000. He sold a couple of pieces of property during
8 that time. And sold his business, TR Hunter Real
9 Estate, to his partner for the sum of \$900,000 in March
10 of 2005.

11 So the government's position is that this
12 defendant has plenty of earning capability and assets
13 for which he should be able to afford his own
14 representation.

15 THE COURT: All right. Well, he'd have to fill
16 out an accurate financial affidavit before I would
17 appoint any attorney to represent him. For now, I'll
18 just set this over until Monday at 1:30 for the
19 appearance of counsel on his behalf should he choose to
20 retain one, or for further proceedings, should he not
21 retain one.

22 For today's proceeding, I'll appoint Federal
23 Defenders for purposes of the arraignment.

24 THE DEFENDANT: Your Honor, I am not interested
25 in being represented by federal -- I -- he -- I had a

1 visit with this gentleman previously. And he said that
2 he worked for the federal government, I believe. And so
3 I don't understand -- I guess because he disclosed that,
4 then there is no conflict of interest with respect to
5 fiduciary, his being federal government, and being able
6 to represent me, otherwise I'd see that as a conflict.

7 THE COURT: Okay. Well, I -- he's not going to
8 represent you after today anyway. It's just the
9 government indicates you have sufficient funds to be
10 able to hire your own attorney. So I would suggest you
11 get started and do that so that you can have somebody
12 that has your trust and confidence who represents you in
13 these proceedings.

14 MR. WEINTRAUB: Your Honor --

15 THE DEFENDANT: I'm sorry, is this the
16 government?

17 THE COURT: Is who the government?

18 THE DEFENDANT: Is this -- I'm confused here.

19 THE MARSHALL: Okay. Stay there. Quit
20 fidgeting around.

21 THE DEFENDANT: I'm sorry, I'm sorry.

22 THE COURT: The person standing next to you is
23 an Assistant Federal Public Defender. No, he is not the
24 government.

25 THE DEFENDANT: No, the -- you referred to the

1 government.

2 THE COURT: The person who spoke earlier about
3 your financial situation --

4 THE DEFENDANT: Yes.

5 THE COURT: -- and your assets? He's an
6 Assistant United States Attorney.

7 THE DEFENDANT: Assistant United States
8 Attorney.

9 THE COURT: He represents the government in
10 this matter.

11 THE DEFENDANT: May I ask his name? I'm sorry.
12 I don't mean disrespect. Please don't accept it as
13 disrespect.

14 THE COURT: No one takes it as disrespect. Do
15 you want to identify yourself.

16 MR. FITZGERALD: It's a matter of record, Your
17 Honor. I am an Assistant United States Attorney. And
18 my name is William E. Bud Fitzgerald.

19 THE COURT: All right.

20 THE DEFENDANT: Thank you.

21 MR. FITZGERALD: Your Honor, one other matter
22 if I may, the Marshals talked to me before the hearing
23 and informed me that this defendant has failed to
24 cooperate in the rendering of certain things that are
25 required by law, and that is the -- cooperate in his

1 fingerprinting, photographing, and production of DNA, as
2 well as responding to a personal history information
3 questionnaire. And I would just ask that the court
4 order this defendant to cooperate with the Marshals in
5 processing.

6 THE COURT: Well, certainly he's not even
7 eligible for release until he's processed. And if he
8 refuses to cooperate in the processing, you give me no
9 choice, Mr. Johnson, but to keep you in custody.

10 THE DEFENDANT: Your Honor, may I speak?

11 THE COURT: Yeah, you can speak, but I'm
12 telling you the way it is.

13 THE DEFENDANT: Yeah, okay. I don't understand
14 that. It was my understanding that --

15 THE COURT: It doesn't matter if you don't
16 understand it. If you don't cooperate with the
17 processing, you are not going to be released. And you
18 may not understand why. And I'm not going to take the
19 time to explain it, because I don't think you will
20 understand it -- or you will tell me you don't
21 understand it even after I explain it, so --

22 THE DEFENDANT: I would like to know -- I
23 believe that my fingerprints and DNA are my property,
24 and --

25 THE COURT: Okay.

1 THE DEFENDANT: -- I had the document to give
2 to you today but they have prevented me. They took all
3 of my documents and things from me that basically
4 established that -- what I understand to be --
5 establishes those to be my property. So then their
6 taking those from me would be theft.

7 I don't understand how they can take things
8 from me when I haven't been found guilty of anything.
9 How can they take my property? I don't understand.

10 THE COURT: You are in custody. There are
11 rules and procedures we have for detaining people
12 pretrial or fashioning conditions of release for them
13 pretrial. If someone refuses to cooperate in the
14 investigation into whether or not they are releasable
15 subject to certain conditions, then that person is going
16 to stay in custody.

17 If someone refuses to cooperate in the
18 processing of them after they've been arrested, such as
19 in the taking of their fingerprints, that person is
20 going to stay in custody pending trial.

21 I mean, these are your choices that you are
22 making. You are free to make them. They are not
23 choices I would recommend that you make. But as long as
24 you are making the choices you are making right now, I
25 am unable to release you. And I am going to order you

1 detained pending the hearing on Monday at 1:30.

2 I would recommend strongly that you hire an
3 attorney to represent you. And it may be that you will
4 listen to that attorney as the attorney gives you advice
5 on what you should do at this moment, especially in
6 connection with the Pretrial Services' investigation.
7 But if you choose not to listen to your attorney, we're
8 going to be right back in the same place Monday that we
9 are now with you being detained.

10 I'm going to postpone the arraignment until
11 Monday at 1:30. I order this defendant detained pending
12 that hearing.

13 THE DEFENDANT: I don't accept that.

14 MR. FITZGERALD: Thank you, Your Honor.

15 (The proceedings were concluded at 1:48 p.m.)

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CERTIFICATE

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I, Deborah Wilhelm, Certified Shorthand Reporter
for the State of Oregon, do hereby certify that I was
present at and reported in machine shorthand the oral
proceedings had in the above-entitled matter. I hereby
certify that the foregoing is a true and correct
transcript, to the best of my skill and ability, dated
this 7th day of December, 2009.

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/s/ Deborah Wilhelm

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Deborah Wilhelm, RPR

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Certified Shorthand Reporter

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Certificate No. 00-0363

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